UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JOSHUA HENRY,

Plaintiff,

v.

TOM ROY, Commissioner of the MNDOC; THE MINNESOTA DEPARTMENT OF CORRECTIONS; JEREMY SCHWARTZ, in his official and individual capacities; ALICE REMILLARD, in her official and individual capacities; and MINNCOR/ANAGRAM,

Defendants.

Case No. 19-CV-0429 (JRT/TNL)

REPORT AND RECOMMENDATION

Plaintiff Joshua Henry alleges that he was injured while employed by the Minnesota Department of Corrections ("MDOC") during his incarceration at a facility managed by MDOC. Henry's original complaint was nearly blank; the documents attached to the complaint showed that this litigation was likely to concern Henry's medical care while incarcerated, but the pleading *itself* did not contain relevant factual allegations. *See* Complaint [ECF No. 1]. Rather than recommend dismissal at that time for failure to state a claim upon which relief may be granted, this Court afforded Henry an opportunity to submit an amended complaint. *See* ECF No. 2. Henry has now submitted his amended complaint, *see* ECF No. 6; that pleading is now before the Court for review.

Because Henry applied for *in forma pauperis* ("IFP") status, *see* ECF No. 2, his pleading is subject to review pursuant to 28 U.S.C. § 1915(e)(2)(B). After review, this Court concludes that Henry qualifies financially for IFP status. That said, an IFP application will be denied, and an action will be dismissed, when an IFP applicant has filed a complaint that fails to state a cause of action on which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii); *Atkinson v. Bohn*, 91 F.3d 1127, 1128 (8th Cir. 1996) (per curiam); *Carter v. Schafer*, 273 Fed. App'x 581, 582 (8th Cir. 2008) (per curiam) ("[C]ontrary to plaintiffs' arguments on appeal, the provisions of 28 U.S.C. § 1915(e) apply to all persons proceeding IFP and are not limited to prisoner suits, and the provisions allow dismissal without service."). In reviewing whether a complaint states a claim on which relief may be granted, this Court must accept as true all of the factual allegations in the complaint and draw all reasonable inferences in the plaintiff's favor. *Aten v. Scottsdale Ins. Co.*, 511 F.3d 818, 820 (8th Cir. 2008). Although the factual allegations in the complaint need not be detailed, they must be sufficient to "raise a right to relief above the speculative level . . . ." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The complaint must "state a claim to relief that is plausible on its face." *Id.* at 570. In assessing the sufficiency of the complaint, the court may disregard legal conclusions that are couched as factual allegations. *See Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Pro se complaints are to be construed liberally, but they still must allege sufficient facts to support the claims advanced. *See Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004).

Henry's amended complaint succinctly lays out the factual allegations at issue:

> On September 8, 2017, in the Industry Anagram Warehouse at Faribault Correctional Facility, ductwork from an HVAC unit fell from the ceiling and struck Mr. Henry while he was performing assigned duties. Prison staff immediately sent all offenders by ambulance to District One Hospital including plaintiff. Mr. Henry was then airlifted to Region Hospital St. Paul for further evaluation because Mr. Henry was unconscious / unresponsive when he was struck in the head. Later that morning, plaintiff was returned to the [prison] where he was monitored and assessed hourly by medical staff for 72 hour[s] due to his injuries. Mr. Henry suffered severed [sic] neck and lower back pain to this day. He also has regular headaches and [mental] disorders (PTSD) and lack of sleep due to his injuries.

Amended Complaint at 1-2 (emphases removed).

The events at issue in this lawsuit are therefore clear. Less clear, however, is the legal grounds for relief being raised by Henry in this lawsuit. No formal claim or cause of action is mentioned by Henry in the amended complaint. Nor, for that matter, has Henry pleaded "a short and plain statement of the grounds for the court's jurisdiction" as required by Rule 8(a)(2) of the Federal Rules of Civil Procedure. Accordingly, it is not clear whether Henry intends to seek relief under federal law, under state law, or both.

To the extent that this Court has jurisdiction over the complaint because the legal claims raised by Henry present a question of federal law, *see* 28 U.S.C. § 1331, those federal-law claims have been inadequately pleaded. "A prison official violates the eighth amendment if he or she 'acts with deliberate indifference to a substantial risk of harm to the prisoner.'" *Blades v. Schuetzle*, 302 F.3d 801, 803 (8th Cir. 2002) (quoting *Perkins v. Grimes*, 161 F.3d 1127, 1130 (8th Cir. 1998)). "To show deliberate indifference, the prisoner . . . must prove both that the official's acts caused a sufficiently serious

deprivation and that the official had a subjectively culpable state of mind." *Perkins*, 161 F.3d at 1130. In this case, Henry has not alleged that any of the named defendants or anyone else at MDOC were aware, or had any reason to be aware, of the faulty HVAC ductwork that caused his injury. Accordingly, prison officials could not (on Henry's account) have been *deliberately* indifferent to his safety and thereby violated his constitutional rights. Similarly, prison officials were not, on Henry's version of events, deliberately indifferent to his medical needs following the injury. *See Roberts v. Kopel*, 917 F.3d 1039, 1042 (8th Cir. 2019) (discussing elements of deliberate indifference to medical needs claim). Indeed, Henry does not allege that his medical care following the incident was deficient in any way, much less than prison officials deliberately denied him access to medical care or afforded him access only to substandard medical care.

Henry's (potential) legal claims sound more naturally in state law than federal law. For example, while there is no reason from the amended complaint to think that prison officials were deliberately indifferent to Henry's safety, it is conceivable that he might be able to fashion a complaint alleging that prison officials acted with negligence in maintaining the HVAC ductwork that caused any injury to Henry. But the Court lacks original jurisdiction over such state-law claims unless Henry can establish that the parties are of diverse citizenship. *See* 28 U.S.C. § 1332(a). Henry has not alleged the citizenship of the parties and thus has failed to establish that the parties are of diverse citizenship; by all indications, both Henry and at least some (if not all) of the defendants are citizens of Minnesota. Accordingly, the Court's subject-matter jurisdiction over the state-law claims cannot be predicated on diversity of citizenship. Finally, the Eighth

Circuit has instructed district courts not to exercise supplemental jurisdiction over state-law claims where, as recommended here, all federal claims are dismissed prior to trial. *See Hervey v. County of Koochiching*, 527 F.3d 711, 726-27 (8th Cir. 2008).

Henry has not adequately alleged a violation of federal law, and the Court lacks jurisdiction over any claims raised by Henry in this action that state law was violated. Accordingly, it is now recommended that this action be dismissed without prejudice.

[Continued on next page.]

RECOMMENDATION

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED THAT:

1. This matter be DISMISSED WITHOUT PREJUDICE pursuant to 28 U.S.C. § 1915(e)(2)(B).

2. The application to proceed *in forma pauperis* of plaintiff Joshua Henry [ECF No. 2] be DENIED.

Dated: August 6, 2019

s/ Tony N. Leung
Tony N. Leung
United States Magistrate Judge
District of Minnesota

Henry v. Roy et al.
Case No. 19-cv-0429 (JRT/TNL).

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).